

# **Transposition & Implementation of ELD**

## **Financial Security Issues**

**Training Workshop: Evaluation and Management of  
Environmental and Social Risks in Lending and Investment  
Practices**

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# Overview

- State of Transposition
- Implementation Features
- State of Financial security
- ELD Cases
- The Commission's Report (after Article 14)

# ELD – Status of transposition

**26 Member States** have notified complete transposition (as of February 2010)

**Only 1 Member State** has not yet fully transposed:

**Austria:** transposition completed at federal level concerning damage to water and partly damage to land, but transposition still missing at Länder level (**only 1 of 9 Länder missing**) concerning damage to protected species & natural habitats and partly damage to land

## ELD – Implementation features: defences

**Both defences incorporated:** Belgium (regions), Cyprus, Czech Republic, Estonia, Greece, Italy, Latvia (only regarding GMOs), Malta, Netherlands (only after justification), Portugal, Slovakia, Spain, Romania, Slovak Republic, United Kingdom (except GMOs in Scotland, Wales)

**Both defences not applicable:** Belgium (federal level), Bulgaria, Germany, Hungary, Ireland, Poland, Romania

**State of the art defence applicable but permit defence not:** France

**Permit defence applicable but State of the art defence in general not:** Denmark, Lithuania

**Mitigation ground:** Sweden

## **ELD – Implementation features: Strict liability beyond Annex III**

**Enlarged scope of strict liability:** Belgium (different by region/federal state), Denmark (comprehensive), Greece (option), Hungary (comprehensive), Latvia (specific), Lithuania (comprehensive), Netherlands (option), Sweden (comprehensive)

**Scope of strict liability identical with ELD:** Bulgaria, Cyprus, Czech Republic, Estonia, France, Ireland, Italy, Poland, Romania, Slovakia, Spain, United Kingdom

## **ELD – Implementation features: Nationally protected species and habitats**

### **Extension to nationally protected species and habitats:**

**Yes:** Belgium, Cyprus, Czech Republic, Estonia, Greece, Hungary, Latvia, Lithuania, Poland, Portugal, Spain, Sweden, United Kingdom

**No:** Bulgaria, Denmark, France, Germany, Ireland, Italy, Netherlands, Romania, Slovak Republic

## **ELD – Implementation features: Spreading of sewage sludge exempt/covered**

**Exempt:** Bulgaria, France, Latvia, Portugal, Romania, Slovakia, United Kingdom

**Covered:** Cyprus, Czech Republic, Denmark, Germany, Greece, Hungary, Ireland, Italy, Lithuania, Netherlands, Sweden

## **ELD – Implementation features: Multi-party cost allocation**

**All parties have full responsibility (joint & several):** Belgium, Cyprus, Czech Republic, Germany, Greece, Hungary, Ireland, Italy, Latvia, Portugal, Romania, Spain, Sweden, United Kingdom

**Each party obliged to pay only its share (proportional):** Bulgaria, Denmark, France, Lithuania, Slovakia



## ELD – Implementation features: (Mandatory) Financial Security

- Most MS decided for a **voluntary financial security scheme**
- Examples of MS that will introduce a **mandatory financial security scheme** include:
  - Bulgaria (**Jan 2011**), Czech Republic (**Jan 2013**), Greece (**May 2010**), Hungary (?), Portugal (?), Spain (**April 2010**), Slovakia (?), and Romania (?)
  - Schemes **differ significantly** in scope of covered operators, liabilities, recognised instruments, etc.
  - All above countries will **facilitate the implementation of mandatory financial security** by the use of a gradual approach, financial guarantee ceilings and/or the exclusion of low-risk activities

# Approaches to financial security

- **Facilitation to obtain financial security**
- **Collaboration between MS and operators/insurers**
- **Products available and market coverage**
  - Are the products cover sufficiently ELD requirements
  - Are there available at prices that appeal to operators
  - Are they spread across EU?
  - Do they cover the requirements of operators?
- **Experiences (if any) with the *gradual approach, ceilings for financial guarantees, and the exclusion of low-risk activities***
- ***Availability of alternatives to security***

# Gaps, limitations, possible solutions

## Main barriers for product and market development:

- Lack of data on loss frequency and loss severity
  - Especially regarding gradual pollution and compensatory remediation
  - Affects more GTPL market than EIL market
- Lack of experience in dealing with environmental liabilities
  - Especially in claims management
- Costs of insurance policies
- Potential overlap with other insurance products
- Variations in the transposition across Europe
- Poor communication about ELD and related financial security products, e.g. by brokers

# ELD Cases

- **Identification and Analysis of cases under ELD**
  - We do not have SO MANY ELD cases – WHY?
- **Building a database of cases**
  - To increase the availability of data on incidents and claims management
  - To facilitate the evaluation of financial security products
  - To develop best practices

# Elements of the Article 14(2) Report

## **The report will cover:**

- The effectiveness of the Directive in terms of actual remediation of environmental damages,
- The availability at reasonable costs and
- The conditions of insurance and other types of financial security for the activities covered by Annex III.

## **The report shall also consider in relation to financial security the following aspects:**

- a gradual approach,
- a ceiling for the financial guarantee and
- the exclusion of low-risk activities.

# Some possible proposals

- **Guidance for better understanding the ELD**
  - For MS (legal interpretations, basic technical work)
  - For insurers and operators (awareness raising, support similar efforts and work in progress in some MS)
- **Methodologies for estimating costs of environmental damages**
  - Guidelines are starting to be developed, e.g. UK, France, Hungary and Spain
  - Is there a need for Commission's Guidelines on this?

## Some possible recommendations/proposals

- **Facilitating better risk assessment and risk management in companies to increase the preventive effect of ELD**
- **Information exchange at all levels**
  - MS, insurers, brokers, operators, risk managers
- **Better communication about available financial security products**
- **Clear and unambiguous legal framework**
- **More awareness raising**

# Commission's work on ELD

## Accessible at:

<http://ec.europa.eu/environment/liability/>

## Some useful links:

Link to the most recent MEMO (07/157), with Q&A:

<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/07/157&#38;format=HTML>

## Commission's Studies related to the Implementation of ELD

[updated when new reports are available – Includes the 2008 and 2009 studies]

<http://ec.europa.eu/environment/enveco/liability/index.htm>